IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 460 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHOTUBHAI @ SAMUBHAI MALEK

Versus

STATE OF GUJARAT

Appearance:

MR HRIDAY BUCH for Petitioner No. 1

DHARMESH D NANAVATY for Petitioner No. 1

MS MITA PANCHALA, APP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/10/2003

ORAL JUDGEMENT

1. By way of filing this Application, the petitioner has challenged the order dated 18.12.2002 passed by the Sub-Divisional Magistrate, Dhrangadhara, in exercise of

powers conferred upon him under Section 56(b) of the Bombay Police Act, 1951 to extern the petitioner for one year from the city of Dhrangadhara and adjourning area, and not only from the city of Dhrangadhara but from the whole District of Surendranagar.

2. According to the facts of the case, a Notice under Section 59 of the Bombay Police Act came to be served upon the petitioner on the ground that the petitioner was a headstrong person and due to his fear, nobody come forward for making any complaint against him. It was also mentioned in the Notice that three offences came to be registered against the petitioner on 30.11.1997, 12.9.2000 and 13.3.2002. The first offence came to be registered under Sections 85 and 66(1)(b) of the Bombay Police Act. The second offence came to be registered under Section 504, 506(2) of the IPC and under Section 135 of the Bombay Police Act and the third offence came to be registered against the petitioner under Sections 365, 323, 506(2) etc. of the Indian Penal Code. It was alleged that the petitioner was in the habit of picking up quarrels with the citizens and demanding money and hence it was proposed to remove the petitioner from the District of Surendranagar.

3. In response to the notice, it appears that an explanation came to be filed by the petitioner and petitioner also examined witnesses on 18.11.2002. After hearing the petitioner, the order impugned came to be passed on 18.12.2002. Against the impugned order, Appeal came to be filed before the State Government, but the same came to be dismissed on 25.2.2003.

4. Learned Advocate Mr. Hriday Buch for the petitioner and learned APP Ms. Mita Panchal for the respondents were heard at length.

5. Going through the order impugned in this petition, it appears that the order came to be passed by the Sub-Divisional Magistrate, Dhrangadhara, without considering anything on the record. The authority concerned concerned, i.e. Sub-Divisional Magistrate, Dhrangadhara, was pleased to observe only to the extent that in support of the allegations levelled against the petitioner, he considered the statements of the witnesses and evidence carefully and came to the conclusion that the allegations levelled against the petitioner were proved, except this three lines, there is nothing in the order impugned to suggest that there was sufficient reason and material before the Sub-Divisional Magistrate, Dhrangadhara, to come to such conclusion. The order

passed is absolutely non-speaking order. When Section 59 enjoins a duty upon the authority to issue notice and ask for the explanation of the proposed externee, it is the duty of the concerned authority to see that if explanation offered is not acceptable to it, the reasons for the same may reflect in the order passed. Not only that Section 59 of the Bombay Police Act entitles the proposed externee to tender the evidence in his favour in the shape of documentary evidence as well as oral. In this case, it is apparent that the externee petitioner tendered the evidence in his favour. There is nothing on the record reflecting that the evidence tendered by the petitioner was not acceptable to the concerned authority. In short, the order impugned is based on no reason at all and the same is required to be set aside on this ground alone, and consequently the order passed by the Government dated 25.2.2003 rejecting the appeal filed by the petitioner against an order passed by Sub-Divisional Magistrate, Dhrangadhara, is also required to be set aside.

6. In the result, for the reasons aforesaid, the order dated 18.12.2002 passed by the Sub-Divisional Magistrate, Dhrangadhara, in Externment Case No.2/2002 against the petitioner removing him from the District of Surendranagar and as confirmed in Appeal by the Appellate Authority is hereby quashed and set aside. Consequently, the order passed by the Government on 25.2.2003 rejecting the Appeal of the petitioner is also quashed and set aside. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair